

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5

99 SEP 13 22:14

IN THE MATTER OF:	)	
	)	DOCKET No. CAA-5-99-006
Perstorp Polyols, Inc.	)	
Toledo, Ohio	)	Proceeding to Assess
	)	Administrative Penalty
	)	under Section 113(d) of the
	)	Clean Air Act, 42 U.S.C.
	)	§ 7413(d)

**CONSENT AGREEMENT AND CONSENT ORDER**

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, (U.S. EPA) instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992).

**I. PRELIMINARY STATEMENT**

1. Respondent, Perstorp Polyols, Inc. (Perstorp), is a corporation incorporated under the laws of the State of Delaware, with a synthetic organic chemical manufacturing "facility" located at 600 Matzinger Road, Toledo, Ohio.

2. Complainant, the Director of the Air and Radiation Division, Region V of the United States Environmental Protection

Agency instituted this civil administrative proceeding for the assessment of a civil penalty by issuing an Administrative Complaint and Notice of Opportunity for Hearing against the Respondent on February 25, 1999.

3. The Complaint alleged that the Respondent violated Section 112(I)(3)(A) of the CAA, 42 U.S.C. § 7412(I)(3)(A), and the National Emission Standards for Organic Hazardous Air Pollutants (NESHAPs) from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 C.F.R. Part 63, Subpart G, 59 Fed. Reg. 19468).

4. The Complaint proposed a civil penalty of \$275,473.00. Based upon information received from Respondent during settlement discussions, Complainant agreed to amend the Complaint and adjust the proposed penalty to \$175,473.00. The Amended Complaint will be filed concurrently with this Consent Agreement and Consent Order (CACO). The Agency mitigated the penalty amount due to Respondent's good faith in resolving this matter and other factors as justice required. The final penalty of \$140,378.00 has been agreed to by all the parties.

5. The parties agree that resolution of this matter through entry of this CACO is an appropriate means of resolving this matter.

**II. CONSENT AGREEMENT**

6. Before the taking of any testimony, without adjudication of any issues of law or fact, the Complainant and Respondent consent to the entry of, and agree to comply with, the terms of this CACO.

7. The Respondent admits the jurisdictional allegations in the Complaint.

8. The Respondent neither admits nor denies the factual allegations in the Complaint.

9. The Respondent consents to assessment of civil penalties provided in the Order below.

10. The Respondent withdraws its request for a hearing and waives any and all rights under any provisions of law to a hearing on the allegations in the Complaint or to challenge the terms and conditions of this CACO.

**III. CONSENT ORDER**

IT IS HEREBY ORDERED AND ADJUDGED as follows:

11. Respondent shall pay the United States a civil penalty in the amount of \$140,378.00. Respondent shall pay the \$140,378.00 within 30 days of the date that U.S. EPA files a fully executed copy of this CACO with the Regional Hearing Clerk.

12. The civil penalties payable hereunder shall be made by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

A transmittal letter, indicating the relevant Respondent's name, complete address, and the case docket number must accompany the payment. The case docket number shall also be included on the face of the check. The Respondent shall send a copy of the check and transmittal letter to:

- a. Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (P-19J)  
Chicago, Illinois 60604-3590; and
- b. Margaret Sieffert  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (AE-17J)  
Chicago, Illinois 60604-3590; and
- c. Karl A. Karg  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3590.

13. Respondent's failure to comply with any provision of this CACO may subject it to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the civil penalty, together with interest,

handling charges and nonpayment penalties as set forth in Paragraph 14 below. In any such collection action, the validity, amount and appropriateness of this order or the penalty assessed hereunder are not subject to review.

14. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts if the civil penalty is not paid pursuant to the terms of this CACO:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date a fully executed copy of this CACO is received by the Respondent provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within the times described in Paragraphs 11 and 12 above.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for each month that any portion of the assessed penalty is more than 30 days past due.

c. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should the Respondent fail to pay on a timely basis the full amount due under this CACO, including interest and handling charges, the Respondent shall pay the United States' enforcement and collection expenses, including but not limited to attorneys'

fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment shall be ten percent (10%) of the aggregate amount of the Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

#### **IV. GENERAL PROVISIONS**

15. The Respondent certifies that the violations of law alleged in the Complaint have been remedied in accordance with the Clean Air Act and that the Toledo facility is now in compliance with the provisions of the Clean Air Act and regulations at issue in the Complaint.

16. This CACO constitutes a settlement of all claims for civil penalties pursuant to Section 113 of the Clean Air Act for the civil violations alleged in the Complaint. Nothing in this CACO is intended to nor shall be construed to resolve any criminal liability of the Respondent. Compliance with the terms of this CACO shall not be a defense to any actions subsequently commenced pursuant to Federal law and regulations administered by Complainant, and it is the responsibility of the Respondent to comply with such laws and regulations.

17. The Respondent knowingly and explicitly waives its rights, including those pursuant to Section 113(d)(2) and (4) of the CAA, 42 U.S.C. § 7413(d)(2) and (4), to a judicial or administrative hearing on any of the issues of law or fact as set forth in the Complaint or this CACO.

18. This document constitutes an "enforcement response" as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent's "full compliance history" as addressed in Section 113(e) of the Clean Air Act. 42 U.S.C. § 7413(e).

19. The provisions of this CACO shall be binding on the Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

20. Each party shall bear its own costs, fees and disbursements in this action.

21. The Respondent certifies that it is duly authorized to execute this CACO and that the party signing this CACO on its behalf is duly authorized to bind it to the terms of this document.

22. The parties agree to issuance of the accompanying Final Order.

23. This CACO constitutes the entire agreement between the parties.

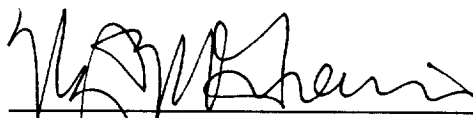
24. This CACO shall terminate upon payment by Respondent of the penalty amount specified above.



The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

**U.S. ENVIRONMENTAL PROTECTION AGENCY,  
COMPLAINANT**

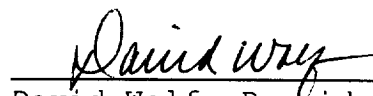
Date: 9/8/99



Margaret M. Guerriero, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5 (A-18J)  
77 West Jackson Boulevard  
Chicago, Illinois 606043-3590

**PERSTORP POLYOLS, INC.  
RESPONDENT**

Date: 8/23/99




David Wolf, President  
Perstorp Polyols, Inc.  
600 Matzinger Road  
Toledo, Ohio 43612-2695

**CONSENT ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent, Perstorp Polyols, Inc., is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: \_\_\_\_\_

9/9/99

  
Francis X. Lyons  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

REC

**CERTIFICATE OF SERVICE**

I certify that I filed the original of the foregoing Consent Agreement and Consent Order (CACO) Assessing Administrative Civil Penalties Against Perstorp Polyols, Inc., Docket No. **CAA-5-99-006** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the CACO to:

P140 895 445  
**Certified Mail Number**

Anthony Sloma, Safety, Health, and Environmental Manager  
Perstorp, Polyols, Inc.  
600 Matzinger Road  
Toledo, Ohio 43612-2695

I also certify that a copy of the CACO was sent by first class mail to:

William Garber, Acting Manager  
City of Toledo  
Division of Environmental Services  
348 South Erie Street  
Toledo, Ohio 43602-1633

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215

on the 13<sup>th</sup> day of September, 1999.

Betty Williams for Loretta Shaffer  
Loretta Shaffer, Secretary  
ARD/AECAB/AECAS (MN/OH)